

THE FOLLOWING GREENWOOD COMMON COUNCIL ORDINANCE WAS INTRODUCED AT THE MAY 15, 2006, MEETING, THE COUNCIL CONTINUED THE FIRST READING TO THE JUNE 19, 2006, MEETING, WITH A POSSIBLE SECOND READING AT THE JULY 5, 2006, MEETING. **PLEASE NOTE THIS ORDINANCE IS SUBJECT TO AMENDMENTS BY THE COMMON COUNCIL.** IF YOU WISH TO SEE THE ADOPTED ORDINANCE PLEASE CONTACT THE CLERK-TREASURER OFFICE AT (317) 888-2100 OR VIA E-MAIL AT CLERK@GREENWOOD.IN.GOV FOR AN EXECUTED COPY AFTER THE SECOND READING.

GREENWOOD COMMON COUNCIL

ORDINANCE NO. 06-18

AN ORDINANCE AMENDING GREENWOOD MUNICIPAL CODE (1993), AS AMENDED, CHAPTER 6, "SAFETY DEPARTMENTS AND REGULATIONS", ARTICLE 10, "SPECIFIC ACTIVITIES REGULATED FOR THE PUBLIC'S HEALTH AND SAFETY", TO ADD A NEW SECTION TO ADOPT REGULATIONS PLACING A RESTRICTION ON THE LEASE OF NEWLY-CONSTRUCTED SINGLE-FAMILY RESIDENTIAL PROPERTY

WHEREAS, I.C. 36-8-2-4 authorizes municipalities to regulate use or possession of property that may endanger the public health, safety, or welfare; and

WHEREAS, it has been determined that many of the nuisance issues in the City arise from residential properties that are leased and are not owner-occupied and such nuisances contribute to the demise of the character and stability of residential areas and a reduction in property values; and

WHEREAS, it has been determined that it is in the best interest of the public health, safety and welfare to protect the character and stability of residential areas and therefore preserve property values in the City, since property taxes are based upon market value of property and property taxes are the source of funding for public services and the public would be endangered if these services were not adequately funded; and

WHEREAS, it has been determined that it is too late to protect the character and stability of, and therefore preserve the property value of, existing single-family and attached single-family (duplex) residential properties that are not owner-occupied and are leased, and that it is imperative to preserve the value of newly-constructed single-family residential property; and

WHEREAS, it has been further determined that to preserve property values of newly-constructed single-family residential properties, the right of owners to lease newly-constructed single-family residential property should be restricted for a reasonable period of time so as to encourage development and maintenance of such properties in a manner that establishes desirable character and a firm foundation of stability; and

WHEREAS, the City recognizes that the right of property owners to use and enjoy their properties needs to be balanced against the City's exercise of its police powers regarding use of property so that property rights of owners are not infringed upon without due process,

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF GREENWOOD, INDIANA, THAT:

Section 1. Section 6-350, "Restriction Regarding the Lease of Single-Family Residential Property", is hereby adopted and added to the Greenwood Municipal Code (1993), as amended, Chapter 6, "Safety Departments and Regulations", Article 10, "Specific Activities Regulated for the Public's Health and Safety", to read as follows:

"Sec. 6-350 Purpose

The purpose of this Section is to protect the public health, safety and welfare by protecting the character and stability of newly-constructed residential areas to preserve the value of newly-constructed single-family and attached single-family (duplex) residential property so as to ensure real property tax assessment in adequate amounts to fund necessary public services.

(a) Definitions

The following words and phrases, whenever used in this Section, shall be construed as defined in this subsection:

1. Attached Single-Family Residential Dwelling: Single-family dwelling units attached by a common wall or walls, and legally platted so that each unit sets on an individual lot providing for fee simple ownership of each lot.
2. Certificate of Occupancy: The certificate issued by the Planning Department in accordance with the Greenwood Building Code and Greenwood Zoning Code that permits a person or persons to occupy a building.
3. Family: One or more persons occupying a single dwelling unit, living together as a single housekeeping unit, and sharing common living, sleeping, eating and cooking facilities. Family does not include any group living in a boarding house, hotel, club, fraternity, sorority, or rooming house.
4. Lease: To enter into a contract with another person to convey the right to that person to possess and occupy specific real property for a specified term and for a specified amount of rent.
5. Newly-Constructed: A building for which a building permit has been issued to construct a building which is not an addition to, or remodel of, an existing structure.
6. Single-Family Residential Dwelling: A detached residential dwelling unit other than a mobile home, designed for and occupied by one family only.
7. Tenant: The person to whom the right has been conveyed to possess and occupy specific real property for a specified term and for a specified amount of rent.

(b) Restriction on the Lease of Newly-Constructed Single-Family and Attached Single-Family (Duplex) Residential Dwellings

Newly-constructed single-family and attached single-family (duplex) residential dwellings may not be leased to any tenant and shall be owner-occupied, or occupied by members of the owner's family, for a period of thirty-six (36) months from the date of the issuance of the Certificate of Occupancy for the dwelling, subject to the waiver procedures set forth in Subsection (d).

(c) Residential Property Lease Review Board

There is established a Greenwood Residential Property Lease Review Board ("Board"), which shall consist of three (3) citizen members appointed by the Mayor, each of whom must be a resident of the City and one of whom shall be a real estate broker licensed in Indiana. A Board member may not be a member of the Greenwood Advisory Plan Commission, Greenwood Board of Zoning Appeals, or Common Council.

1. Term of Office. The term of office of the members of the Greenwood Residential Property Lease Review Board shall commence from the date of appointment and expire four (4) years from the date of appointment. However, at the expiration of the respective terms of each of the members originally appointed, their respective successors shall be appointed in the

same manner as the original appointee, and each succeeding member shall serve for a term of four (4) years. Each member shall continue to serve until his/her successor is appointed and qualified. In the event any person appointed as a Board Member shall fail to qualify as provided within ten (10) days after the mailing to him/her of notice of his/her appointment, or if any member after qualifying shall die, resign, vacate office, move residency from the City of Greenwood, or in the event a member is unable to hear a petition due to a conflict of interest, a new or temporary member shall be chosen to fill such vacancy in the same manner as provided for the member in respect to whom such vacancy occurred, and the member so chosen and appointed shall serve for the remainder of the vacated term in the event of death, resignation, vacation of office, change of residency, and in the event of a temporary replacement due to conflict of interest, the member shall serve the period necessary to dispose of the petition giving rise to the conflict.

2. Compensation of Board Members. Board members shall receive no salaries but shall be entitled to reimbursement for any expenses necessarily incurred in the performance of their duties.

3. Officers. The Board shall elect one of its members as President, one as Vice President, each of which officers shall serve from the day of his/her election until the 31st day of January the next following his/her election and until his/her successor is elected and qualified.

4. Rules of Procedure. The Board is authorized to adopt by-laws, rules, regulations and procedures it may deem necessary for the proper conduct of its proceedings, and the carrying out of its duties. Meeting and hearings shall be held at such time as it may determine and upon such notice as it may fix, in accordance with the provisions of the by-laws, rules and regulations adopted by the Board, the provisions of this Section and Indiana Law.

5. Quorum. A majority of the Board shall constitute a quorum and the concurrence of a majority shall be necessary to authorize any action.

6. Duties. The Board shall hear and issue decisions regarding hearings on:

A. Alleged violations of the Restriction on the Lease of Newly-Constructed Single-Family Residential or Duplex Single-Family Residential Dwelling set forth in Subsection (b); and

B. Petitions for waiver of the application of the Restriction on the Lease of Newly-Constructed Single-Family Residential or Duplex Single-Family Residential Dwelling set forth in Subsection (b).

(d) Petition for Waiver of Restriction

Any property owner desiring to lease single-family or attached single-family (duplex) residential property to a tenant or tenants, or any tenant who has leased such property, who believes him/her self to be aggrieved by the restriction of Subsection (b), may petition for waiver of the application of the restriction to the Greenwood Residential Property Lease Review Board and said Board shall conduct a hearing with regard thereto in accordance with the procedures set forth herein.

1. Initiation of Waiver and Filing Fee. A Petition pursuant to this Subsection shall be initiated with the filing of a Petition for Waiver from the Restriction on the Lease of Newly-Constructed Single-Family or Attached Single-Family (Duplex) Residential Dwelling ("Petition for Waiver") with the Greenwood Clerk-Treasurer's Office, together with a filing fee in the amount of Fifty Dollars

(\$50.00). The filing fee shall be refunded in full if the Petition for Waiver is granted and the owner is permitted to lease the residential property by action of the City, or by action of a court having jurisdiction.

2. Form of Petition for Waiver. The Petition for Waiver shall be in a form calculated to inform the Greenwood Residential Property Lease Review Board of the parties to the action, the relief requested, and the reasons the petitioner believes that the rental restriction should not apply.

3. Hearing Regarding Petition for Waiver. The Board shall fix a reasonable time for the hearing of petitions and shall provide notice to the petitioning property owner and his/her tenant, or the petitioning tenant and his/her landlord owner, of the date, time, and location of the hearing in accordance with its notice requirements.

A. Right to Appear. At a hearing, the property owner or tenant has a right to appear and present evidence in person, by agent, or by attorney.

B. Communication with Board Members. A person may not communicate with a member of the Board before the hearing with intent to influence the member’s action on a matter pending before the Board.

C. Power of the Board. For purposes of this Subsection, the Board has all the powers of the City of Greenwood when it acts upon a petition for waiver.

D. Petitioner’s Burden. At such hearing, the petitioning property owner or tenant shall bear the burden of going forward with the evidence and shall present evidence showing cause why the restriction should not apply and addressing the following propositions:

(1) The lease of the property shall not be injurious to existing property values in the jurisdiction;

(2) The need to lease the property is caused by factors outside the control of the property owner and the inability to lease the property creates a financial hardship; and

(3) The property being leased shall be maintained so as not to create a public nuisance;

E. Decision and Written Findings

Upon conclusion of the hearing at which the matter is presented, or at the conclusion of the hearing if the matter is continued, the Greenwood Residential Property Lease Review Board shall make a determination based upon the evidence presented and may waive such restriction as it believes is appropriate under the circumstances, including the placement of conditions upon the lease of the property.

The Greenwood Residential Property Lease Review Board shall provide a copy of its decision to the City, to the petitioning property owner and his/her tenant, or to the petitioning tenant and his/her landlord owner within ten (10) working days after making its decision, and shall make written findings of fact to support its decision.

(e) Enforcement

1. Code Enforcement Officer(s) to Conduct Inspection

Greenwood Code Enforcement Officer(s) shall enforce the provisions of this Section, and Code Enforcement Officers are authorized to make inspections of residential property upon application and receipt of a search warrant or other appropriate court order authorizing an inspection, when Code Enforcement Officers have reason to believe that a violation of this Section has been or is being committed.

2. Code Enforcement to Issue Notice of Violation

Whenever a Code Enforcement officer has reason to believe that an owner is in violation of any requirement set forth in this Section, he/she shall issue a written notice to the owner and tenant setting forth the alleged violation, advising the owner that the violation must be corrected, and fixing a date not sooner than ten (10) days from the date of service of the notice when the owner and tenant may appear before the Greenwood Residential Property Lease Review Board to be heard on the alleged violation. The notice shall be served upon the owner and tenant by any of the following methods: delivery in person, certified mail, or first class mail. The notice shall:

- A. Set forth the alleged violation;
- B. Describe the dwelling where the violation is alleged to exist or to have been committed;
- C. Set forth the date, time, and location of the hearing before the Greenwood Residential Property Lease Review Board on the alleged violation; and
- D. Set forth the penalty that may be assessed for the violation if the Greenwood Residential Property Lease Review Board determines the owner is in violation.

A copy of the Notice shall be forwarded to the Greenwood Residential Property Lease Review Board

3. Hearing on Violation.

The Greenwood Residential Property Lease Review Board shall conduct a hearing regarding any alleged violation of which it receives notice on the date and time, and at the location fixed, in the Notice of Violation unless there is a continuance of the hearing to another date granted pursuant to the Board's rules of procedure.

- A. Right to Appear. At the hearing on the violation, the property owner and tenant have a right to appear and present evidence in person, by agent, or by attorney.
- B. Communication with Board Members. A person may not communicate with a member of the Board before the hearing with intent to influence the member's action on the violation pending before the Board.
- C. Power of the Board. For purposes of this Subsection, the Board has all the powers of the City of Greenwood when it conducts a hearing and acts upon a violation.

D. Petitioner's Burden. At the hearing on the violation, the property owner shall present evidence that shows the property is not being leased and is therefore not in violation, or the owner shall present evidence that rebuts the following presumptions:

(1) The lease of the property is injurious to existing property values in the jurisdiction;

(2) The property is not maintained and shall not be maintained so as to create a public nuisance.

E. Decision and Written Findings

(1) Decision Upon Conclusion of Hearing. Upon conclusion of the hearing at which evidence is presented and considered regarding the alleged violation, the Greenwood Residential Property Lease Review Board shall make a determination based upon the evidence presented by the City, the Owner, and the Tenant, whether a violation of the restriction in Subsection (b) has occurred, and if so, shall issue a Decision directing the owner to correct the violation as required, setting forth the penalty assessed for the violation in accordance with the provision of Subsection (f), and setting forth the location where the penalty may be paid and date for payment.

(2) Decision When Owner Fails to Appear. Upon the failure of the owner to appear before the Greenwood Residential Property Review Board regarding an alleged violation after notice and opportunity to be heard, the Greenwood Residential Property Review Board shall make a determination based upon the evidence presented by the City and tenant whether a violation of the restriction in Subsection (b) has occurred, and if so, issue a Decision directing the owner to correct the violation as required, setting forth the penalty assessed for the violation in accordance with the provision of Subsection (f), and setting forth the location where the penalty may be paid and date for payment.

3. Written Findings. The Greenwood Residential Property Lease Review Board shall provide a copy of its decision to the City, to the property owner, and to the tenant within ten (10) working days after making its decision, and shall make written findings of fact to support its decision.

(f) Violations and Penalties

1. It shall be unlawful for any person who owns newly-constructed single-family or attached single-family (duplex) residential property to lease said property in violation of this Section.
2. A person who owns newly-constructed single-family or attached single-family (duplex) residential property who has been determined to have violated this Section shall be guilty of an infraction punishable by:

(A) A fine of Fifty Dollars (\$50) for the first violation;

- (B) A fine of One Hundred Dollars (\$100) for the second violation regarding the same property;
- (C) A fine of Two Hundred Fifty Dollars (\$250) for the third violation regarding the same property.

- 3. Each day on which a violation of this Section occurs shall be considered a separate and distinct violation.
- 4. If, after multiple violations by the same person for the same property, the City has reason to believe that the imposition of fines will not be effective in enforcing this Section, the City may apply to a court of competent jurisdiction for an injunction to prohibit continuation of any violation of this Section. Such application for relief may include seeking a temporary restraining order, temporary injunction or permanent injunction.

(g) Severability

If any subsection, sentence or provision of this Section, or the application thereof to any person or circumstances shall be declared invalid, such invalidity shall not affect any of the other sections, sentences, provisions, or applications of this Section which can be given effect without the invalid provision or application, and to this end the provisions of this Section are declared to be severable.

Section 2. The sections, paragraphs, sentences, clauses, phrases and words of this Ordinance are separable, and if any word, phrase, clause, sentence, paragraph or section of this Ordinance shall be declared unconstitutional, invalid or unenforceable by the valid judgment or decree of a Court of competent jurisdiction, such unconstitutionality, invalidity or unenforceability shall not affect any of the remaining words, phrases, clauses, sentences, paragraphs and sections of this Ordinance.

Section 3. This Ordinance shall be in full force and effect upon its passage, approval and publication according to law.

Passed by the Common Council of the City of Greenwood, Indiana, this _____ day of _____, 2006.

 Ronald Bates, President
 Greenwood Common Council

FOR:

AGAINST:

ATTEST:

Jeannine Myers, Clerk-Treasurer

The foregoing within and attached Ordinance passed by the Common Council of the City of Greenwood, Indiana, on the _____ day of _____, 2006, is presented by me this _____ day of _____, 2006, at _____ O’Clock ____M., to the Mayor of the City of Greenwood, Indiana.

Jeannine Myers, Clerk-Treasurer

The foregoing within and attached Ordinance passed by the Common Council of the City of Greenwood, Indiana, on the _____ day of _____, 2006, is signed and approved by me this _____ day of _____, 2006, at _____ O’Clock ____M.

CHARLES E. HENDERSON, Mayor of
the City of Greenwood, Indiana